

# Minnesota Pollution Control Agency *fax*

**to:** Joe Otte, Wenck

**fax:** 651/228-1969

**phone:** 651/228-1909 ext. 11

**from:** **Wayne F. Sarappo**  
Project Manager, Voluntary Investigation & Cleanup  
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**Date:** 1/4/02 **pages (including cover sheet):** 29

**Joe:** Here is the example three party VRAA. I am checking to see if we still have this in an electronic format, but I'm not too hopeful. Call me if you have questions. Later, Wayne

ROOM / CSM

STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of Response )  
Actions Under the Minnesota )  
Environmental Response and )  
Liability Act Minn. Stat. )  
Ch. 115B at Certain Property )  
Owned by CSM Investors, )  
Inc., and CSM Kasota, Inc. )  
in the city of Minneapolis, )  
Hennepin County, Minnesota )

**VOLUNTARY RESPONSE  
ACTION AGREEMENT**

**I. JURISDICTION AND BACKGROUND**

A. This Voluntary Response Action Agreement ("Agreement") is entered into pursuant to the authority vested in the Commissioner of the Minnesota Pollution Control Agency (the "Commissioner") by the Land Recycling Act of 1992, as amended ("LRA"), and by the Minnesota Environmental Response and Liability Act ("MERLA"), Minn. Stat. Ch. 115B.

B. In order to obtain a Partial Certificate of Completion from the Commissioner as set forth in Section XXI herein, CSM Kasota, Inc. ("Kasota"), a Minnesota corporation, and CSM Investors, Inc. ("CSM"), a Minnesota corporation (collectively, the "Developers"), are entering into this Agreement to evidence the completion of a Voluntary Response Action Plan ("VRAP") at the Subject Property which has been approved by the Commissioner under the LRA to respond to identified releases and threatened releases of hazardous substances or pollutants or contaminants at that property, and to provide the Commissioner with an easement for future access to the Subject Property for the purposes of allowing additional response actions to address releases or threatened releases at or from the Subject Property not addressed in the VRAP.

C. The Subject Property is located generally south of Elm Street and west of Kasota Avenue in the City of Minneapolis, Hennepin County, Minnesota and more particularly described on Exhibit A attached hereto and made a part hereof (the "Subject Property").

D. The Developers have undertaken and completed response actions at the Subject Property pursuant to a VRAP approved by the Commissioner under the LRA.

E. The Commissioner intends to issue a Certificate of Completion ("Certificate") to the Developers for the completed response actions subject to the terms and conditions set forth in this Agreement.

F. By undertaking and completing the VRAP and obtaining the Certificate from the Commissioner, the Developers intend to obtain for themselves, their successors and assigns, and persons providing financing to the Developers (including but not limited to the Lincoln National Life Insurance Company, Lincoln Investment Management, Inc., their successors and assigns) the protection from liability that applies pursuant to Minn. Stat. §. 115B.175 when the Certificate is issued.

NOW, THEREFORE, in consideration of the mutual obligations undertaken by the parties herein, the parties agree as follows:

## II. PARTIES

This Agreement shall apply to and be binding upon the following parties:

- A. CSM Kasota, Inc. ("Kasota"), a Minnesota corporation,
- B. CSM Investors, Inc. ("CSM"), a Minnesota corporation,
- and
- C. The Commissioner.

## III. STATEMENT OF FACTS

The following constitutes a summary of the facts on which this Agreement is based. None of the facts related herein shall be considered admissions by the parties with respect to any matters unrelated to this Agreement or the enforcement thereof.

A. CSM purchased the Subject Property on March 29, 1996. Kasota, an affiliate of CSM, purchased the Subject Property from CSM on August 2, 1996, and is the current owner of the Subject Property.

B. All known releases and threatened releases of hazardous substances or pollutants or contaminants, as defined in Minn. Stat. Ch. 115B, have been identified and investigated in soils and groundwater at the Subject Property.

C. The Subject Property was operated as a grain elevator by Archer Daniels Midland Company until 1988. Environmental assessments of the Subject Property have identified the presence of various contaminants at the Subject Property, including heavy metals, PAHs and ash.

D. Pursuant to Minn. Stat. § 115B.17, subd. 14, CSM has submitted to the Commissioner (or the Commissioner's delegee), and the Commissioner (or delegee) has approved those documents regarding investigation and response actions at the Subject Property listed in Exhibit B.

E. The Developers have submitted information to the Commissioner regarding themselves in Affidavits from Murray Kornberg and David Carland dated February 27, 1997, which information is sufficient to allow the Commissioner to find that the Developers are qualified to obtain the protection from liability provided by the LRA as persons not otherwise responsible for the releases or threatened releases at the Subject Property under Minn. Stat. §§ 115B.01 to 115B.18. The Developers hereby certify that the representations made in the above Affidavits are true to the best of their knowledge and belief and that the Developers have not knowingly failed to disclose other information material to the Commissioner's findings regarding the Developers' qualification to obtain liability protection under the LRA.

#### IV. DEFINITIONS

Unless otherwise explicitly stated, the definitions provided in Minn. Stat. § 115B.02 shall control the meaning of the terms used in this Agreement.

#### V. VOLUNTARY RESPONSE ACTION PLAN

A. The Developers have adopted and submitted to the Commissioner as their VRAP for the Subject Property under the LRA all of the documents described in Section III, Paragraph D herein. The VRAP is a partial response action plan within the meaning of Minn. Stat. § 115B.175, subd. 2.

B. Pursuant to Minn. Stat. § 115B.175, subd. 2, the Commissioner has determined that:

1. The VRAP provides for all response actions required to carry out the proposed reuse or development of the Subject Property in a manner that protects public health and welfare and the environment;

2. The response actions and the activities associated with the reuse or development of the Subject Property as described in the documents listed in Exhibit B and the summary description of the response actions set forth on Exhibit C will not aggravate or contribute to releases or threatened releases that are not required to be removed or remedied under the VRAP, and will not interfere with or substantially increase the cost of the response actions to address the remaining release or threatened releases; and

3. The Developers of the Subject Property have agreed, as provided in, and subject to the provisions of Section XIV and XV of this Agreement, and the Easement Agreement (hereinafter described), to cooperate with the Commissioner (or delegee) in taking response actions necessary to address remaining releases or threatened releases, and to avoid any action that interferes with the response actions, and to provide the Commissioner with a Response Action Easement Agreement (the "Easement Agreement") over a portion of the Subject Property for the purposes of allowing such response actions, in the form of attached Exhibit D.

C. The Commissioner hereby approves the VRAP submitted for the Subject Property pursuant to the LRA (the "Approved VRAP").

D. The Approved VRAP is hereby made an integral and enforceable part of this Agreement without being attached hereto.

## **VI. SCOPE OF AGREEMENT**

By this Agreement the Commissioner acknowledges that:

A. The Developers have implemented the Approved VRAP at the Subject Property.

B. The Developer agrees to reimburse the MPCA's costs as provided in Section XX of this Agreement.

C. The MPCA agrees to issue a Certificate in accordance with Section XXI herein.

## **VII. RESOLUTION OF DISPUTES**

A. If a dispute arises as to any part of this Agreement, either party may initiate dispute resolution by providing to the other party a written statement setting forth the matter in dispute, the position of the party, and the information the party is relying upon to support its position. The other party shall provide a written statement of its position and supporting information to the initiating party within fourteen (14) calendar days after receipt of the initial statement.

B. Unless the parties are able to reach a resolution of the dispute and to reduce such resolution to writing in a form agreed upon by the parties within twenty-one (21) calendar days after the initiating party receives the statement of position from the responding party, the Commissioner shall issue a written decision to the Developers resolving the dispute.

C. If a Commissioner's decision is issued under this Section VII, it shall become an integral and enforceable part of this Agreement unless Kasota or CSM commences an action to challenge the Commissioner's decision within twenty-one (21) calendar days of the date of issuance of the decision. For purposes of judicial review, the Commissioner's decision shall be considered a final decision of the MPCA.

## **VII. NOTIFICATION**

Unless otherwise specified by the Commissioner in writing, notice required hereunder to the Commissioner shall be sent by first class mail, or hand delivered to:

Gerald Stahnke, Project Manager

Ground Water and Solid Waste Division  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, Minnesota 55115-4194

notice to Kasota required hereunder shall be sent to:

CSM Kasota, Inc.  
2575 University Avenue West, Suite 150  
St. Paul, Minnesota 55114-1024  
Attn: Vice President

notice to CSM required hereunder shall be sent to:

CSM Investors, Inc.  
2575 University Avenue West, Suite 150  
St. Paul, Minnesota 55114-1024  
Attn: Chief Financial Officer

unless otherwise specified by Kasota or CSM in writing.

#### **XI PROJECT MANAGERS**

A. The MPCA and Kasota shall each designate a Project Manager for the purposes of overseeing the implementation of this Agreement. The Kasota Project Manager is Murray Kornberg. The MPCA Project Manager is Gerald Stahnke. Either party may change its designated Project Manager or designate an alternate Project Manager by so notifying the other party in writing. To the maximum extent possible, communications between the Developers and the MPCA concerning the terms and conditions of this Agreement shall be directed through the Project Manager.

B. Each Project Manager shall have the authority regarding the Subject Property to: (1) take samples or direct that samples be taken; (2) direct that response action work stop for a period not to exceed seventy-two (72) hours if the Project Manager determines that activities at the Subject Property may create a danger to public health or welfare or the environment; (3) observe, take photographs and make such other reports on the progress of the response action work as a Project Manager deems appropriate; and (4) review records, files and documents relevant to this Agreement.

The Project Managers of all parties shall either be on the Subject Property or available on call by telephone during all hours of response action work at the Subject Property. The absence of any Project manager from the Subject Property shall not be cause for stoppage of response action work.

## **XII. SAMPLING AND DATA AVAILABILITY**

The Commissioner and the Developers shall make available to each other the results of sampling, test or other data generated by either party, or on its behalf, with respect to the implementation of this Agreement. The Developers and the Commissioner each shall allow split or duplicate samples to be taken by the other party during sample collection conducted during the implementation of this Agreement. The sampling party shall endeavor to give notification to the other party no less than ten (10) calendar days in advance of any sample collection. If it is not possible to provide ten (10) calendar days prior notification, the sampling party shall give written notification to the other party as soon as possible after becoming aware that the samples will be collected.

## **XIII. RETENTION OF RECORDS**

The Developers shall preserve, for a minimum of three (3) years after termination of this Agreement, all records and documents in its possession or in the possession of its divisions, employees, agents, accountants, contractors or attorneys which relate in any way to the presence of hazardous substances or pollutants or contaminants at the Subject Property or to the implementation of this Agreement despite any document retention policy to the contrary.

## **XIV. ACCESS**

Subject and pursuant to the terms and conditions set forth in Response Action Access Easement Agreement ("Easement Agreement"), the MPCA, its officers, employees, contractors, agents, and authorized representatives shall have authority to enter the Subject Property at all reasonable times for purposes of inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement; conducting such tests as the Commissioner or the MPCA Project Manager deems necessary; taking response actions; and verifying the data submitted to the Commissioner by the Developers. If records required to be retained under this Agreement are kept at a location other than the Subject Property, the MPCA, its officers, employees, contractors, agents, and authorized representatives shall have access to such other location at all reasonable times during normal business hours on not less than twenty-four (24) hours prior notice for the purpose of inspecting the records. The Developers, their officers, employees, contractors, agents, and authorized representatives shall honor all reasonable requests for such access by the MPCA, its officers, employees, contractors, agents, and authorized representatives conditioned only upon presentation of proper credentials. The MPCA, its officers, employees, contractors, agents, and authorized representatives shall not unreasonably disrupt the business of the Developers, their officers, employees, contractors, agents, and authorized representatives while the MPCA, its officers, employees, contractors, agents, and authorized representatives exercise its rights to access in accordance with this Section XIV.

## **XV. COOPERATION WITH ANY ADDITIONAL RESPONSE ACTIONS**

Subject and pursuant to the terms and conditions set forth in the Response Action Access Easement Agreement, the Developers agree to cooperate with the Commissioner or other persons acting at the direction of the Commissioner in taking response actions including but not limited to placement of borings, wells, equipment, and structures on the Subject Property necessary to address releases or threatened releases at or from the Subject Property which are not addressed in the Approved VRAP.

By executing, delivering and recording the Response Action Access Easement Agreement the Developers shall grant an easement over and under that portion of the Subject Property described on Exhibit E attached hereto ("Remedial Action Easement Area") to the MPCA, its officers, employees, contractors, agents, and authorized representatives for the purpose of taking response actions under this Section XV, which response actions shall be subject to the special conditions set forth in the Easement Agreement.

Developers agree not to take any action at the Subject Property that interferes with the implementation of response actions implemented by the Commissioner pursuant to this Section XV, provided however that the construction, maintenance and use of the parking lot and related improvements in the Remedial Action Easement Area shall not be deemed to interfere with the implementation of response actions by the Commissioner contemplated hereunder,

#### **XVI. LIABILITY OF MPCA**

The MPCA shall pay compensation of injury to or loss of property or personal injury or death caused by any act or omission of its officers, employees, contractors, agent, and authorized representatives arising out of, from or on account of their acts or omissions in carrying out its obligations or authorities pursuant to this Agreement or the Easement Agreement under circumstances where the MPCA, its officers, employees, contractors, agents, and authorized representatives, if a private person, would be liable to the claimant. Such claims shall be paid in accordance with and shall be subject to the provisions and limitations of Minn. Stat. §§ 3.732 and 3.736.

#### **XVII. HOLD HARMLESS AGREEMENT**

##### **A. The Developers' Duties and Rights:**

1. The Developers agree to indemnify and save and hold the MPCA, its officers, employees, contractors, agents, and authorized representatives harmless from any and all claims or causes of action arising out of, from, or on account of acts or omissions of the Developers, their officers, employees, contractors, agents, or authorized representatives in carrying out its obligations under this Agreement.

2. Within five (5) calendar days of receipt by the Commissioner of notice of any claim, the Commissioner shall give written notice to the Developers of such claim. Failure of the MPCA to give such notice shall not relieve the Developers of any obligation that it may



have to the MPCA except to the extent the Developers demonstrate that the defense of the claim is prejudiced thereby.

3. The Developers shall be entitled to participate in the defense of any claim and it may elect to assume the defense if the MPCA and the Minnesota Attorney General's Office give their written approval of counsel employed for such defense, which approval shall not be unreasonably withheld. If the Developers elect to assume the defense of a claim: (a) the MPCA shall have the right to employ separate counsel at its own expense and to participate in the defense thereof; (b) no compromise or settlement thereof may be effected by the Developers without the written consent of the MPCA and the Minnesota Attorney General's Office unless the sole consideration required by the settlement is a sum of money that is paid solely and in full by the Developers and the MPCA obtains a full release and discharge of all claims which were brought against the MPCA in the matter; and (c) the Developers shall have no liability with respect to any compromise or settlement thereof effected by the MPCA unless the MPCA obtains written consent of the Developers, which consent shall not be unreasonably withheld.

4. If the Developers are obligated to indemnify the MPCA but elect not to assume, or fail to assume, the defense of a claim, the MPCA shall be entitled to assume the defense and prosecute or settle a claim with counsel of its own choice, at the expense of the Developers.

5. If a claim or cause of action arising out of, from, or on account of acts or omissions of (i) the Developers, their officers, employees, contractors, agents, or authorized representatives, and (ii) the MPCA, its officers, employees, contractors, agents, or authorized representatives, in implementing this VRAP, is asserted against both the Developers and the MPCA, and there is a conflict of interest which renders it inappropriate for the same counsel to represent both the Developers and the MPCA, the Developers and the MPCA each shall be responsible for paying for their own separate counsel.

#### **XVIII. OTHER CLAIMS AND DEFENSES**

A. Except as expressly provided in this Agreement, nothing herein is intended to bar or release any claims, causes of action or demands in law or equity by or against any person, firm, partnership, municipality or other legal entity not a signatory to this Agreement for any liability it may have arising out of or relating in any way to the release or threatened release of hazardous substances or pollutants or contaminants or to the generation, storage, treatment, handling, transportation, disposal or release of any hazardous substances or pollutants or contaminants at or from the Subject Property.

B. Nothing herein is intended to extinguish any rights or defenses that the Developers may have under applicable law regarding any liability arising out of or relating in any way to the release or threatened release of hazardous substances or pollutants or contaminants or to the generation, storage, treatment, handling, transportation, disposal or release of any hazardous substances or pollutants or contaminants at or from the Subject Property,

except that such rights or defenses shall not serve as a defense to enforcement of the terms and condition of this Agreement by the parties hereto.

C. It is understood and intended by the parties hereto that: (1) upon issuance of the Certificate by the Commissioner in accordance with Section XXI of this Agreement, the Developers and all other persons qualified for statutory protection from liability under the LRA will receive such protection in accordance with the LRA whether or not such persons are parties to this Agreement; and (2) the Developers and all other persons qualified for statutory protection from liability under the LRA, whether or not such persons are parties to this Agreement, shall have the protection provided by Minn. Stat. § 115B.175, regarding the performance of response actions required in accordance with the Approved VRAP.

D. Neither the MPCA nor the Commissioner shall be held as a party to any contract entered into by the Developers to implement the requirement of this Agreement.

E. The Developers shall not be held as a party to any contract entered into by either the MPCA or the Commissioner to implement the requirements of this Agreement.

#### **XIX. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations including permit requirements. If there is a conflict in the application of federal, state or local laws or regulations, the most stringent of the conflicting provisions shall apply.

#### **XX. RECOVERY OF EXPENSES**

The Developers agree to reimburse the MPCA for the costs incurred by the Commissioner, or the Commissioner's delegee, to review and approve document submitted by the Developers relating to the release and threatened release of hazardous substances or pollutants or contaminants at or from the Subject Property, including the cost of preparing this Agreement and all MPCA costs incurred pursuant to this Agreement but not for the cost of completing the additional response actions set forth in Section XV hereof. The Commissioner will notify the Developers of the amount of costs owed under this Section XX at least quarterly by a written reimbursement statement. Within sixty (60) calendar days following receipt of the Commissioner's reimbursement statement, the Developers shall pay the required sum into the Environmental Response, Compensation and Compliance Account of the Treasury of the State of Minnesota by check payable to the Minnesota Pollution Control Agency.

#### **XXI. CERTIFICATE OF COMPLETION**

A. Subject to and in consideration for the Developer's compliance with the terms and conditions of this Agreement, and based upon the Commissioner's approval of the VRAP and the reports listed in Exhibit B and, based on the Commissioner's determination that the response

actions under the Approved VRAP have been successfully completed by the Developers, the Commissioner agrees to issue a Certificate under the LRA to the Developers.

B. The Commissioner acknowledges that upon issuance of a Certificate, the Developers, their lenders, and any other persons as defined in Minn. Stat. § 115B.175, subd. 6, will receive the protection from liability provided for in Minn. Stat. § 115B.175.

C. The Commissioner acknowledges that upon execution of this Agreement, the Developers and their lenders shall receive the protection from liability provided for in Minn. Stat. § 115B.175, subd. 4.

D. Issuance of a Certificate under this Section does not release or otherwise affect the Developers' duty to perform all obligations under this Agreement not fully performed when the Certificate is issued.

#### **XXII. MAINTENANCE OF RESPONSE ACTIONS; APPROVAL OF ACTIONS DISTURBING RESPONSE ACTIONS OR WASTE**

Developers shall operate and maintain all response actions in accordance with the Approved VRAP. Developers shall not remove or disturb any continuing or permanent response actions or take other actions that would require excavation, removal or treatment of any waste associated with the identified release or threatened release at the Subject Property without submitting to the Commissioner a proposed plan for addressing any threat to public health or welfare or the environment posed by such actions and receiving the Commissioner's approval to take such actions. The Developers maintenance, replacement and use of the existing improvements on site does not constitute disturbance as contemplated herein.

#### **XXIII. ENFORCEABILITY**

This Agreement is legally enforceable by any party hereto in a court of appropriate jurisdiction.

#### **XXIV. AMENDMENT OF AGREEMENT**

This Agreement may be amended only by a written agreement between the Developers and the Commissioner.

#### **XXV. SUCCESSORS**

This Agreement shall be binding upon the Developers, their successors and assigns, and upon the MPCA, its successors and assigns.

#### **XXVI. TERMINATION**

The obligations of the Developers under this Agreement shall be deemed satisfied and this Agreement shall be deemed terminated upon receipt by the Developers of the Certificate of Completion. Sections XIV (Access), XV (Cooperation With Any Additional Response Actions), XXII (Maintenance of Response Actions; Approval of Actions Disturbing Response Actions or Waste) and XXV (Successors), XXVII (Response Action Access Easement Agreement; Recording) and to the extent necessary to enforce those sections, Section XXIII (Enforceability) shall survive any termination of this Agreement.

**XXVII. RESPONSE ACTION ACCESS EASEMENT AGREEMENT; RECORDING**

A. Kasota and the MPCA shall execute the Response Action Access Easement Agreement attached hereto as Exhibit D.

B. The Developers shall record the Response Action Access Easement Agreement, at their own expense, in the Office of the County Recorder or Registrar of Titles, whichever is appropriate, in and for Hennepin County, Minnesota within fourteen (14) calendar days after the date on which the Commissioner issues to the Developers the Certificate for the response actions for the Subject Property pursuant to the LRA.

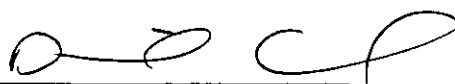
**XXVIII. EFFECTIVE DATE**

This Agreement is effective upon the date that the MPCA executes this Agreement.

BY THEIR SIGNATURES BELOW, THE UNDERSIGNED REPRESENT THAT THEY HAVE AUTHORITY TO BIND THE PARTIES THEY REPRESENT.

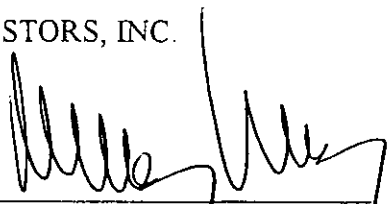
IT IS SO AGREED:

CSM KASOTA, INC.

By:   
David Carland, Vice President

Date: 12/8/97

CSM INVESTORS, INC.

By:   
[Name], [Title]  
MURRAY KORNBERG, V.P.

Date: 12/8/97

MINNESOTA POLLUTION CONTROL AGENCY

By: Harlow E. Wegert  
for Peder A. Larson, Commissioner  
Minnesota Pollution Control Agency

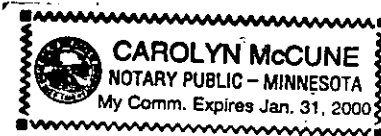
Date: 12/16/97

STATE OF MINNESOTA )  
COUNTY OF RAMSEY )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of DEC., 1997, by David Carland, Vice President of CSM Kasota, Inc., a Minnesota corporation, for and on behalf of said corporation.

Carolyn McCune  
Notary Public

STATE OF MINNESOTA )  
COUNTY OF RAMSEY )



The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of DEC., 1997, by [Name], [Title] CSM Investors, Inc., a Minnesota corporation, for and on behalf of said corporation.

MURRAY KORNBERG, VICE PRESIDENT

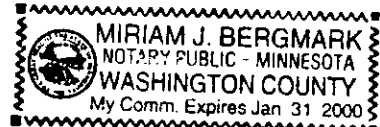
Carolyn McCune  
Notary Public

STATE OF MINNESOTA )  
COUNTY OF Ramsey )



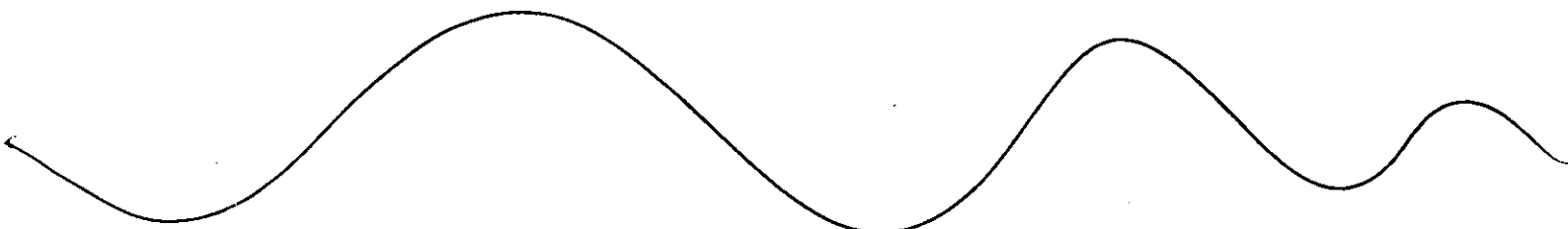
The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of December, 1997, by Peder A. Larson, Commissioner of the Minnesota Pollution Control Agency, for and on behalf of said agency.

Miriam J. Bergmark  
Notary Public



**EXHIBIT A**  
**Legal Description of Subject Property**

Tract A, Registered Land Survey No. 1680, files of the Registrar of Titles, Hennepin County, Minnesota.



## EXHIBIT B

### Voluntary Response Action Plan Documents Reviewed

1. "Phase I and Limited Phase II Environmental Site Assessment, Archer Daniels Midland, 2500 Elm Street, Minneapolis, Minnesota," dated September 28, 1995, prepared by RE/SPEC Inc. (RE/SPEC);
2. "Additional Phase II Investigation Work Plan, Archer Daniels Midland Elevator A, Minneapolis, Minnesota," dated January 17, 1996, prepared by RE/SPEC;
3. "Additional Phase II Investigation Report, Archer Daniels Midland Elevator A, Minneapolis, Minnesota," dated April 11, 1996, prepared by RE/SPEC;
4. "Interim Response Action Plan Addendum, ADM Site, April 17, 1996, prepared by RE/SPEC;
5. Phase II Report Addendum, ADM Site, 2500 Elm Street, Minneapolis, Minnesota," dated April 17, 1996, prepared by RE/SPEC;
6. "Interim Response Action Plan Addendum, ADM Site, 2500 Elm Street, Minneapolis, Minnesota," dated April 17, 1996, prepared by RE/SPEC;
7. "CSM Investors Inc. Site Redevelopment, Former ADM Facility," dated April 18, 1996, prepared by RE/SPEC;
8. "Phase II Report Review Response, ADM Site," dated April 24, 1996, prepared by RE/SPEC;
9. "Phase II Report Review Response #2, ADM Site," dated April 26, 1996, prepared by RE/SPEC; and
10. "Interim Response Action Implementation, Archer Daniels Midland, 2500 Elm Street, Minneapolis, Minnesota," dated September 12, 1996, prepared by RE/SPEC Inc.



## EXHIBIT C

### Summary of Response Actions Completed

Archer Daniels Midland Company operated a grain elevator with railroad service on the Site up until 1988. The elevator was originally constructed in approximately 1910. Environmental site assessments identified the presence of soil impacted with heavy metals, semi-volatile organic compounds (SVOCs), and volatile organic compounds (VOCs). Ash was also identified on the eastern edge of the Site. Ground water impacts included VOCs that exceeded the drinking water standards and PAHs that did not exceed the drinking water standards. There was also a UST present at the Site, PCB-impacted concrete in a transformer room, wells requiring abandonment, hazardous wastes requiring disposal, and asbestos requiring abatement.

The response actions at the ADM Grain Storage Facility Site included the following activities:

1. Soil contaminated with heavy metals and PAHs was excavated from April 29, 1996, to July 3, 1996. A total of 5,710 cubic yards of impacted soil was disposed of at Elk River Landfill.
2. Ash was removed from beneath the future building footprint and storm water detention pond areas and placed over the top of existing ash along the eastern property boundary. This area was covered with clay and Class 5 road base and paved over for use as a parking lot for the new buildings.
3. Two site water wells were sealed with grout on May 9 to 13, 1996, by Bergerson-Caswell, a licensed water well contractor.
4. The PCB impacted floor slab of the transformer building was demolished and taken to Elk River Landfill for disposal.
5. A 500 gallon fuel oil UST was excavated and properly disposed of by Kamish & Sons on May 6, 1996.
6. Electrical equipment, switchgear, and hazardous wastes inside the building were disposed of by Dynex Environmental, Inc.
7. Asbestos pipe wrap and other asbestos containing materials inside the building were abated prior to construction. An asbestos coating on the silos was removed. The peeling asbestos coating on the head house structure was removed by power washing prior to demolition of that structure. Asbestos-containing material was disposed of at Elk River Landfill.

**EXHIBIT D**  
**Response Action Access Easement Agreement**

**RESPONSE ACTION ACCESS EASEMENT AGREEMENT**

This Response Action Access Easement Agreement ("Agreement") is made and entered into effective this \_\_\_\_ day of \_\_\_\_\_, 1997, by and between CSM Kasota, Inc., a Minnesota corporation ("CSM Kasota"), and the Minnesota Pollution Control Agency, a Minnesota state agency ("MPCA").

**RECITALS**

First: CSM Kasota owns the real property described on attached Exhibit A ("Subject Property").

Second: CSM Kasota has developed and now operates an office/warehouse project on the Subject Property which consists of two office/warehouse building and other related improvements, and is commonly known as Kasota Avenue Business Center ("Project"), and which is depicted on the site plan attached hereto as Exhibit C ("CSM Site Plan").

Third: CSM Investors, Inc. (CSM Investors), an affiliate of CSM Kasota, has completed various response actions at the Subject Property in accordance with the MPCA approved Voluntary Response Action Plan ("VRAP").

Fourth: CSM Kasota and CSM Investors have entered into a Voluntary Response Action Agreement with the MPCA dated \_\_\_\_\_, 1997 ("VRA Agreement")

Fifth: Under the VRAP, CSM Investors was not required to address groundwater contamination at the Subject Property and certain soil contamination at the Subject Property, including incinerator ash left at the Subject Property, and CSM Investors did not address such contamination.

Sixth: In accordance with the terms of the VRA Agreement and Minn. Stat. §, 115B.175, subd. 2(b), the MPCA has required that CSM Kasota grant to the MPCA a right-of-entry upon the Subject Property to allow the MPCA Commissioner, or persons acting at the direction of the Commissioner; to undertake reasonable and necessary activities at the property, provided that the activities do not unreasonably interfere with the proposed reuse or redevelopment.

Seventh: Under Minn. Stat. § 115B.17, subd. 15, the MPCA has the authority to acquire interests in real property, including easements, necessary for environmental response actions.

Eighth: CSM Kasota is willing to agree to the foregoing subject and pursuant to the terms and conditions hereinafter set forth.

## **AGREEMENT**

Now, therefore, in consideration of the above stated premises, the mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

### **ARTICLE 1**

#### **Definition of "Owner"**

For the purposes of this Agreement, the term "Owner" means one or more persons or entities holding a fee simple interest, or a vendee's interest, in the Subject Property, or any portion thereof, subject to this Agreement, and includes CSM Kasota. The term "Owner" shall not include any holder of a lien secured by all or part of the Subject Property, unless and until such lien holder acquires ownership in fee by foreclosure, deed in lieu of foreclosure or otherwise.

### **ARTICLE 2**

#### **Access Easement**

**2.1 Grant.** Subject to the conditions set forth in this Agreement, CSM Kasota hereby grants and conveys to MPCA a private, perpetual, nonexclusive access easement ("Access Easement") under which MPCA, its officers, employees, contractors, agents, and authorized representatives shall have authority to enter the Subject Property at all reasonable times for the purposes of inspecting records, operating logs, contracts and other documents relevant to the implementation of the VRA Agreement; conducting such tests as the MPCA Commissioner deems necessary; installing soil borings and monitoring wells; installing and operating equipment for ground water remediation; and verifying the data submitted to the Commissioner by CSM Kasota. CSM Kasota, its officers, employees, contractors, agents, and authorized representatives shall honor all reasonable request for such access by the MPCA, its officers, employees, contractors, agents and authorized representatives conditioned only upon presentation of proper credentials.

**2.2 Scope of Access Easement.** The Access Easement shall be used from time to time for passage and use, both pedestrian and vehicular, for ingress and egress on and over the Subject Property for the purposes of allowing the MPCA to undertake the activities set forth in section 2.1 above. The Access Easement shall at all times be for the use and benefit of the MPCA. Except as specifically permitted herein, the MPCA shall not erect, install or maintain any barriers, fences, curbs, walls, ditches, barricades or other structures or obstacles on or anywhere within the Subject Property which would materially burden or interfere with, impede, slow,

divert or in any way prevent pedestrian or vehicular traffic from passing within, through or across the Subject Property, or which would materially interfere with the normal utilization or maintenance of the buildings and related improvements on the Subject Property, unless first consented to by the Owner of the Subject Property, in writing.

**2.3 Special Undertakings and Agreements.** In connection with the grant of the Access Easement, MPCA specifically agrees as follows:

(A) Avoidance of Disruption; Restoration. MPCA, its officers, employees, contractors, agents and authorized representatives shall not unreasonably disrupt the business of the Owner of the Subject Property while the MPCA, its officers, employees, contractors, agents and authorized representatives exercise its rights to access in accordance with the Access Easement. In no event shall such work involve complete closure of access to the Subject Property as shown on the CSM Site Plan. If any portion of the Subject Property must be disturbed as a result of MPCA's activities, the MPCA shall restore the Subject Property to as close to its original condition as is reasonably possible under the circumstances.

(B) Costs. Except as provided in Section XX of the VRA Agreement, payment of costs incurred by the MPCA, its officers, employees, contractors, agents or authorized representatives as a result of activities at the Subject Property shall be the responsibility of the MPCA or other person incurring such costs, and not the responsibility of the Owner of the Subject Property.

### **ARTICLE 3**

#### **Remedial Action Easement**

**3.1 Grant.** Subject to the special conditions set forth in Section 3.2 below, CSM Kasota hereby grants and conveys to the MPCA a private, perpetual, nonexclusive easement (the "Remedial Action Easement") over, under and across the area legally described on attached Exhibit B ("Remedial Action Easement Area"). Under the Remedial Action Easement, the MPCA, its officers, employees, contractors, agents, and authorized representatives shall have authority to enter the Subject Property for the purpose of taking remedial actions (as that term is defined in Minn. Stat. § 115B.02, subd. 16) at the Subject Property, including but not limited to the placement of equipment and temporary structures on the Remedial Action Easement Area. The Remedial Action Easement shall be for the use and benefit of the MPCA and its successors and assigns.

**3.2 Special Conditions.** In exercising its rights under the Remedial Action Easement, MPCA agrees to and shall comply with the following conditions:

(A) Notice. Prior to entering the Remedial Action Easement Area, for the purpose of completing remedial actions in that area, the MPCA shall first give CSM Kasota at least seven (7) days advance written notice thereof, which notice shall include a description of the work to be performed and a schedule for completion thereof.

(B) In connection with performing the work contemplated herein, MPCA agrees to exercise every reasonable effort to avoid interference with or disruption of access to and utilization of the improvements currently located on the Subject Property. Specifically, MPCA agrees that (i) all staging for work to be performed shall occur wholly on the Remedial Action Easement Area; (ii) the total period, for any staged portion of a remedial action, from start to finish (including restoration), shall not exceed seventy-two (72) hours, and any staged portion of the work shall be entirely completed prior to the next staged portion being commenced; (iii) access to the Project through the existing southerly access drive shall not at any time be completely closed for more than forty-eight (48) consecutive hours; and (iv) not more than twenty (20) parking stalls within the Remedial Action Easement Area shall be removed from service as a part of the remedial actions or any stage thereof.

(C) Restoration. Following completion of remedial actions by the MPCA, the MPCA shall restore the Subject Property to as close to its original condition as is reasonably possible under the circumstances.

(D) Costs. Except as otherwise provided in Section XX of the VRA Agreement, payment of costs incurred by the MPCA, its officers, employees, contractors, agents or authorized representatives in the course of taking remedial actions in the Remedial Action Easement Area shall be the responsibility of the MPCA or other person incurring such costs, and not the responsibility of CSM Kasota.

#### **ARTICLE 4** **Reservation**

CSM Kasota hereby reserves the right to utilize the surface and subsurface areas of the Subject Property for the use and maintenance (including replacements) of improvements currently located within Subject Property, and all other uses and purposes not inconsistent with the rights expressly granted MPCA hereunder.

#### **ARTICLE 5** **Nature of Easements**

The easements created herein shall be a burden on the Subject Property, and any conveyance of fee title to such property or portion thereof shall be deemed to be subject to the easements created herein.

Nothing contained in this Agreement shall be deemed a gift or dedication of any portion of the area of the easements to the general public or for any public purpose, except to the extent expressly provided herein.

**ARTICLE 6**  
**Maintenance and Repair**

**6.1 General Obligations.** Except as otherwise expressly provided in this Agreement, the Owner of the Subject Property shall be responsible for all necessary maintenance, repair and replacement of improvements within or on those portions of the Remedial Action Easement Area.

**6.2 Obligations of MPCA.** MPCA shall be responsible for the restoration work described in Sections 2.3(A) and 3.2(C) above and for maintenance, repair and replacements of any improvements installed by it on the Subject Property. MPCA shall have no obligations beyond those specified herein for the maintenance of surface improvements located on the Subject Property.

**ARTICLE 7**  
**Liability of Owner and MPCA**

Except to the extent specifically provided in this Agreement, CSM Kasota and the MPCA agree that each party will be responsible for its own acts and omissions and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. MPCA's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minn. Stat. § 3.736 and other applicable law.

**ARTICLE 8**  
**Binding Effect**

The provisions of the Agreement shall constitute covenants running with and binding upon the Subject Property and Owners of the Subject Property, and shall inure to the benefit of the MPCA, its successors and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law.

**ARTICLE 9**  
**Severability**

If any provision of this Agreement shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions or other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**ARTICLE 10**

**Captions**

The captions preceding the text of each article and section hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

**ARTICLE 11**

**Governing Law**

This Agreement shall be construed under and enforced in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, this Agreement is executed this \_\_\_\_ day of \_\_\_\_, 1997.

CSM KASOTA, INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

MINNESOTA POLLUTION CONTROL AGENCY

By: \_\_\_\_\_  
Peder A. Larson  
Commissioner

Dated: \_\_\_\_\_

STATE OF MINNESOTA    )  
                                  ) ss  
COUNTY OF RAMSEY    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1997, by \_\_\_\_\_, the \_\_\_\_\_ of CSM KASOTA, INC., a Minnesota corporation, for on behalf of said corporation.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

STATE OF MINNESOTA   )  
                                  ) ss  
COUNTY OF RAMSEY    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
1997, by Peder A. Larson, Commissioner of the MINNESOTA POLLUTION CONTROL  
AGENCY, for and on behalf of the Agency.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

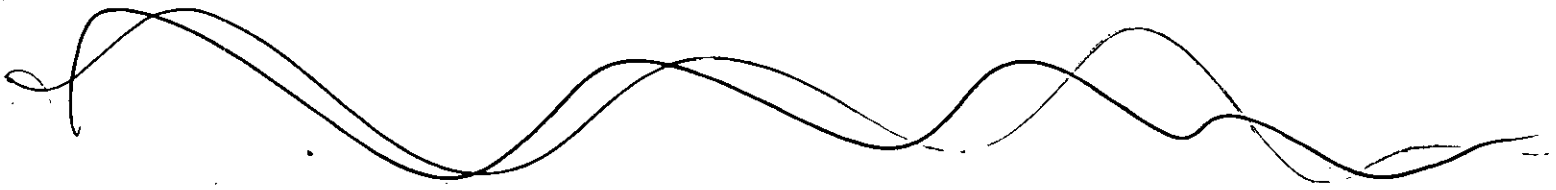
THIS DOCUMENT WAS DRAFTED BY:

C. William Franke  
CSM Corporation  
2575 University Avenue West, Suite 150  
St. Paul, MN 55114-1024  
Phone: (612) 646-1717



**EXHIBIT A**  
**Subject Property**

Tract A, Registered Land Survey No. 1680, files of the Registrar of Titles, Hennepin County,  
Minnesota.



**EXHIBIT B**  
**Remedial Action Easement Area**

Legal Description of Remediation Easement Area

The Northeasterly 85 feet of the Southeasterly 600 feet of the Northwesterly 1,160 feet of Tract A, REGISTERED LAND SURVEY NO. 1680, Hennepin County, Minnesota; and

That part of Tract A, REGISTERED LAND SURVEY NO. 1680, Hennepin County, Minnesota, which lies Southeasterly of the Northwesterly 1,160 feet of said Tract A, as measured along the northeasterly line thereof.

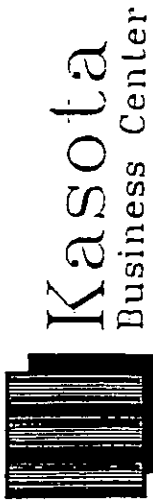
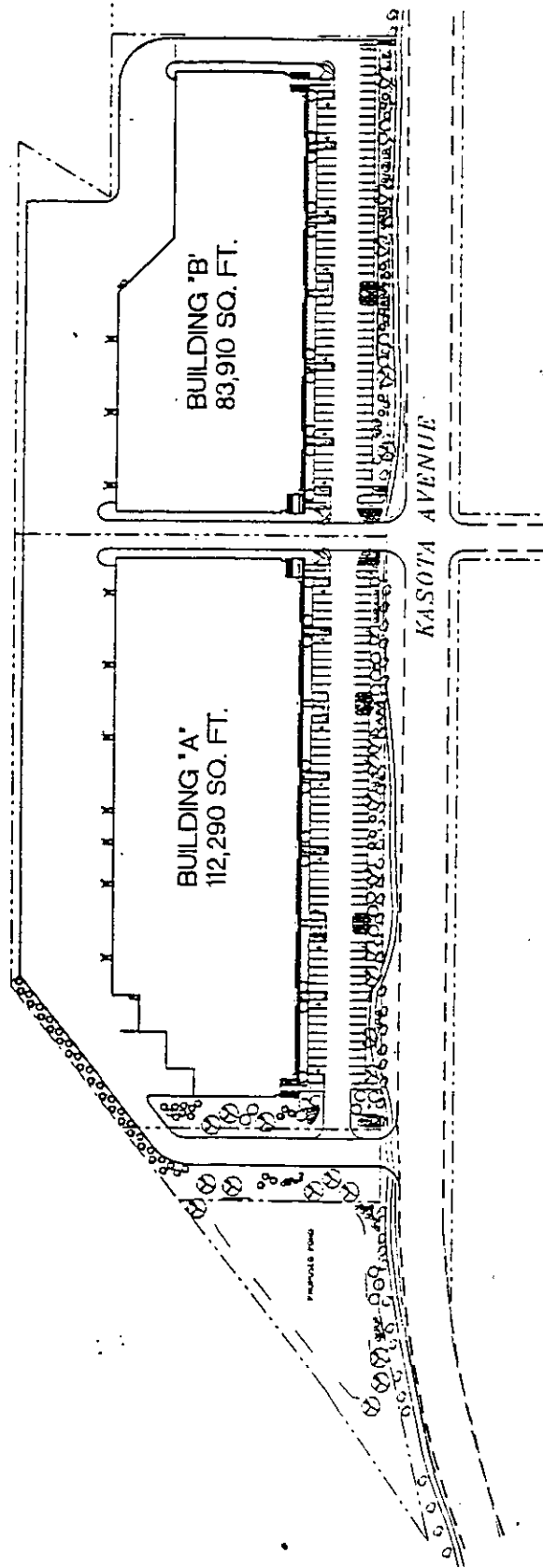


EXHIBIT C  
CSM Site Plan



## EXHIBIT E

### Legal Description of Response Action Easement Area

#### Legal Description of Property

Tract A, REGISTERED LAND SURVEY NO. 1680, Hennepin County, Minnesota.

#### Legal Description of Remediation Easement Area

The Northeasterly 85 feet of the Southeasterly 600 feet of the Northwesterly 1,160 feet of Tract A, REGISTERED LAND SURVEY NO. 1680, Hennepin County, Minnesota; and

That part of Tract A, REGISTERED LAND SURVEY NO. 1680, Hennepin County, Minnesota, which lies Southeasterly of the Northwesterly 1,160 feet of said Tract A, as measured along the northeasterly line thereof.

